

COPY in 2776

Opinion

140

~~Being
Routed~~

March 19, 1958

NEW HAMPSHIRE LAW LIBRARY

OCT 01 1998

CONCORD, N.H.

Mr. Parker L. Hancock, Warden
State Prison
Concord, New Hampshire

Dear Mr. Hancock:

This is in reply to your letter of March 18, 1958 in which you request our opinion as to whether the State Board of Parole can make a re-parole retroactive when acting under the authority conferred on it by RSA 607:48.

You refer specifically to the first sentence of that statute which grants to the Board the power to again parole "upon such terms and conditions as the parole board shall prescribe". You state that the Board is particularly concerned in regard to those cases where a prisoner has been returned to the prison for a violation of parole consisting of a new crime for which he was convicted and a new sentence imposed by the Court, the order of the Court being that the serving of the new sentence shall begin upon completion of serving of the maximum of the prior sentence under which the prisoner was on parole. In other words, if the Board had such power it would be possible for them at the expiration of two-thirds of the minimum of the new sentence to re-parole the prisoner on the first sentence retroactive to the time of his return for violation of parole. The effect of this would be to make all of the time which he had served since his return apply to the new sentence and he would therefore immediately become eligible for parole on such new sentence.

C O P Y

Parker L. Hancock -- 2.

March 19, 1958

Our answer is in the negative. We find no such authority conferred on the Board by RSA 607:48 or any other statute. We further find no cases decided by our Supreme Court which interpret the statutes to confer such power on the Board. The words "upon such terms and conditions as the parole board shall prescribe" contained in the first sentence of Section 48 refer to the requirements which the Parole Board may impose on a prisoner as a condition of his re-parole and cannot in any way be construed to confer upon the Board a power to make the re-parole retroactive to an earlier date. In other words, they simply give the Board power to prescribe the conditions which the prisoner must meet, or live up to, after his release on re-parole. Furthermore, the words "If not so paroled, a prisoner so recommitted shall serve the remainder of his maximum sentence" contained in the second sentence of Section 48, strongly imply that until, and unless, the prisoner is re-paroled all time which he serves after his return to the prison is being served on the balance of his maximum term under the first sentence, and although the Board can re-parole him at any time, nevertheless, such re-parole becomes effective only as of the time it is granted.

We have considered the provisions of RSA 607:50 but do not consider them to be applicable to the problem which you have stated. We interpret this section to apply to the case of a prisoner who has received two or more sentences at the same time, the order of the Court being that the sentences are to be served consecutively. Such a prisoner is eligible to receive a permit under the provisions of this section when he has served a term equal to two-thirds of the total of the minimum terms of the several sentences. We do not consider that this section applies in the case of a prisoner who has been paroled and is returned for violation of parole consisting of another crime for which the Court has imposed a new sentence to be served upon completion of the balance of the maximum term of his original sentence. Any other interpretation would lead to the result that such a prisoner would be eligible for parole upon serving two-thirds of the minimum term of the new sentence because he would then have completed two-thirds of the total of the minimum term of both sentences. We do not feel that this

COPY

Parker L. Hancock -- 3.

March 19, 1958

was the intent of the Legislature in enacting this section and you have further advised me over the telephone that this statute was in fact sponsored in the 1953 Session of the Legislature only for the purpose of clarifying the parole status of a prisoner who received two or more sentences at the same time to be served consecutively.

Sincerely yours,

John J. Zimmerman
Assistant Attorney General

JJZ:mv